IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

No. 21879

JAMES DONALD EDWARDS,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPELLANT'S OPENING BRIEF

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JURISDICTION

This is an appeal from a judgment rendered by the United States District Court for the Central District of California.

The appellant was sentenced to the custody of the Attorney General for a period of three years after a one count conviction for violation of Title 50, United States Code App., Section 462 (knowingly fail and refuse to be inducted into the Armed Forces of the United States), Universal Military Training and Service Act [CT 28].[1]

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1. CT refers to the Clerk's Transcript.

Title 18, United States Code, Section 3231, conferred jurisdiction in the District Court over the prosecution of this case. The United States Court of Appeals for the Ninth Circuit has jurisdiction of this appeal under Rule 37(A)(1) and (2) of the Federal Rules of Criminal Procedure. Notice of Appeal was filed in the time and manner required by law [CT 31].

STATEMENT OF THE CASE

The indictment charged appellant with a violation of of the Universal Military Training and Service Act for refusing to submit to induction [CT 2].

Appellant pleaded "not guilty" and was tried by the Honorable Jesse W. Curtis, District Judge, sitting alone without a jury. Appellant was found guilty and sentenced to imprisonment for a period of three years [CT 28].

A written motion for judgment of acquittal was filed during the trial [CT 21].

THE FACTS

On April 8, 1964, appellant filed his Classification Questionnaire (SSS Form No. 100) and signed Series VIII [Ex. 7][2] indicating he was a conscientious objector.

He was mailed the Special Form for Conscientious Objector (SSS Form No. 150) and timely returned it, fully executed [Ex. 12-15]. In this form he showed be believed

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2. Ex. refers to the government's exhibit, the complete Selective Service System file of the appellant.

in a Supreme Being and, in an appended statement (the space provided on the form for answers being only a few lines each) showed that his religious beliefs took precedence over any earthly command, the origin of his beliefs being "a thorough study of the Bible with my family" and, in all other respects made as full a showing as is possibly required, presenting at the very least a prima facie case [Ex. 16].

Nevertheless, despite anything in the file to the contrary, or in existence, he was classified in Class I-A and subsequently ordered to report for induction.

QUESTION PRESENTED

I

Was the denial of conscientious objector classification to appellant by the Selective Service System without basis in fact, arbitrary and contrary to law? This question was raised by the Motion for Judgment of Acquittal.

II

Was the appellant prejudiced by the interchange of panel members during his processing? This question was also raised by the motion.

III

Was the appellant properly processed at the induction station by the proceedings actually accorded him? This question was also raised by the motion.

SPECIFICATION OF ERROR

I

The District Court erred in denying the Motion for Judgment of Acquittal.

SUMMARY OF ARGUMENT

I

Appellant made out a prima facie case as a conscientious objector by submitting a Form 150 showing him to be a member of Jehovah's Witnesses. The task of the court is to search the record for some affirmative evidence to support the local board's denial of I-O classification to appellant. The record in this case is barren of any such evidence. *Dickinson* v. *United States*, 74 S. Ct. 152 (1953).

II

The sole evidence in the record shows there was, at the least doubt as to whether he was administratively processed by the right board members. This is contrary to law and he should have been acquitted.

III

The unrebutted evidence in the record shows that the induction ceremony was contrary to law and prejudicial to appellant.

ARGUMENT

I

The Denial of a Conscientious Objector Classification by the Selective Service System Was Without Basis in Fact, Arbitrary, Capricious and Contrary to Law.

Section 6 (j) of Title 1 of the Universal Military Training and Service Act, as amended (50 U.S.C. App. 456 (j)), provides:

> "Nothing contained in this title . . . shall be construed to require that any person be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. . . ."

Section 1622.14 (A) of the Selective Service Regulations [32 C.F.R. 1622.14 (A)] provides:

> "1622.14 Class I-O: Conscientious Objector Available for Civilian Work, Contributing to the Maintenance of the National Health, Safety or Interest.—(A) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces."

The local board's duties and the courts' scope of review in draft cases were spelled out by the United States Supreme Court in *Dickinson* v. *United States,* 74 S. Ct. 152, 157, 158, 346 U.S. 389 (1953):

"The task of the courts in cases such as this is to search the record for some affirmative evidence to support the local board's overt or implicit finding that a registrant has not painted a complete or accurate picture of his activities. . . . If the facts are disputed the board bears the ultimate responsibility for resolving the conflict—the courts will not interfere. Nor will the courts apply the test of 'substantial evidence'. However, the courts may properly insist that there be some proof that is incompatible with the registrant's proof of exemption."

". . . when the uncontroverted evidence supporting the registrant's claim places him prima facie within the statutory exemption, dismissal of the claim solely on the basis of suspicion and speculation is both contrary to the spirit of the Act and foreign to our concepts of justice."

The dissenting opinion of Mr. Justice Jackson puts the proposition more bluntly (74 S. Ct. 152, 159):

". . . Under today's decision, it is not sufficient that the board disbelieve the registrant. The board must find and record affirmative evidence that he has misrepresented his case. . . ."

In the present case, appellant made out a prima facie case for a I-O classification when he filed with the local board his Form 150 in which he claimed conscientious objection to war in any form based upon religious training and belief.

The government's case (the appellant's Selective Service file placed in evidence as the government's exhibit) is totally barren of any evidence whatsoever tending to cast the slightest doubt on appellant's sincerity.

Appellant claimed membership in the Jehovah's Witnesses.

The Court may take judicial notice of the fact that although Jehovah's Witnesses usually have trouble later in the administrative procedure, because of their claim to be ministers, they almost never have trouble getting a I-O classification. There is not a single shred of evidence in the record to cast doubt on appellant's bona fide membership in Jehovah's Witnesses and belief in their creed.

Thus the local board's denial of I-O classification to appellant was without basis in fact and upholding that arbitrary classification would be contrary to the rule of law as set forth in Dickinson.

II

Appellant Was Administratively Processed by Local Board Members Who Were Not Authorized to Process Him and Contrary to Law.

The Selective Service System regulations (32 C.F.R. § 1600, et seq.) have the full force and effect of law. *Singer* v. *United States,* 323 U.S. 338, 345-346 (1945).

> Section 1604.52a Panels of Local Boards.—(a) Whenever the State Director of Selective Service determines that the work load of a local board has become too great to be handled without undue delay, he is authorized to establish panels of such local board in such number as he may determine, but not to exceed one panel for each three local board members. The jurisdiction of each such panel shall be the same as the jurisdiction of the local board subject to the limitations contained hereafter in this section.

(b) Whenever the State Director of Selective Service establishes panels in a local board, the chairman of such local board shall assign at least three members of the local board to each such panel. Each local board member, including the chairman, shall be assigned to a panel. No members shall be assigned to more than one panel at the same time.

(c) The chairman of the local board shall not alter the assignment of members of the local board to panels without the written consent of the State Director of Selective Service. A member of a local board shall not be qualified to vote on any question or classification which arises before any panel of the board except the one to which he is assigned, but all questions arising in the selection of registrants for armed forces physical examination or for induction, except questions concerning the classification of registrants, shall be determined by the local board as a whole without regard to panel assignments.

(d) A majority of the members of the local board assigned to a panel of the board shall constitute a quorum for the transaction of business before that panel. A majority of the members assigned to a panel who are present at any meeting of the panel at which a quorum is present shall decide any question or classification properly before the panel. Every member of the panel present, unless disqualified, shall vote on every question or classification. In case of a tie vote on any question or classification, the panel shall postpone action on the question or classification until it can be decided by a majority vote.

(e) The chairman of the local board shall assign the cases of registrants to the panels thereof in such

manner that the resultant classification actions shall establish a single availability list for the board so that registrants shall be available generally in the order of their liability for service in the armed forces. Except as otherwise provided in this paragraph, no panel of a local board other than the panel to which the case of a registrant is initially assigned shall determine any question or classification with respect to such registrant. After the case of a registrant has been assigned to a panel, the chairman of the local board may reassign any such case to another panel when he determines such action is necessary in order to prevent undue delay in the processing of registrants. Whenever, because of the provisions of paragraph (a) of Section 1604.55, a majority of a panel is disqualified to act on the case of a registrant assigned to the panel, the chairman of the local board shall reassign the case to another panel, or, if all of the panels of the local board are similarly disqualified to act on the case, the local board shall request the State Director of Selective Service to designate another local board to which the registrant shall be transferred for action on his case. The panel to which the case of a registrant is reassigned shall thereafter retain jurisdiction to determine all questions or classifications with respect to that registrant to the same extent as though it were the panel of initial assignment.

It appears from the oral testimony in court, and unrebutted, that the board members, although assigned to independent panels, operate independently, that is, they operate on work of other boards with respect to prohibited activity. The testimony of the Group [cluster of local boards, officed together] Coordinator shows that what

members did in various registrants' cases could not be distinguished. Reporter's Transcript page 11, line 18 on to page 20, line 11.

This type of loose procedure has been judicially condemned by various courts. Two illustrations are submitted:

In *Olvera* v. *United States*, 5 Cir., 1955, 223 F.2d 880, 822, the court concluded:

> "Under this principle, it is of the essence of the validity of board orders and of the crime of disobeying them that all procedural requirements be strictly and faithfully followed, and that s showing of failure to follow them with such strictness and fidelity will invalidate the order of the board and a conviction based thereon."

In a recent case in the Central District of California, the court, in acquitting the defendant in *United States* v. *Wilson*, No. 468 Cr., on June 27, 1967, in a comparable situation, stated to the United States Attorney:

> "And I would suggest you tell the board that they had better watch how they do these things because I will dump them again if they come back with one panel member signing for another panel member."

III

Appellant Was Not Properly Processed by the Army Men at the Induction Center.

It is well established that a clear line between civilian and military status must be maintained. This Court observed in *Chernekoff* v. *United States*, 9 Cir., 1955, 219 F.2d 721, 725:

"One purpose of this regulation is self-evident. It is intended to give a registrant a last clear chance to change his mind and accept induction rather than certain indictment and possible conviction for a felony carrying a maximum punishment of five years or a fine of not more than $10,000.00 or both."

The Court also pointed out, concerning the ceremony prescribed by the pertinent regulations:

"This ceremony must be conformed to unless the selectee himself makes it impossible." [725]

The oral testimony (R.T. p. 22, line 21) shows the form letter account of the ceremony, pages 61-62 of the government's exhibit was incorrect in several particulars, some crucial. This testimony was unrebutted.

CONCLUSION

For the reasons given above, the judgment of the District Court should be reversed and an order entered directing the District Court to enter a judgment of acquittal.

Respectfully submitted,

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Attorneys for Appellant

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that,

in my opinion, the foregoing brief is in full compliance with those rules.

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OCTOBER 20, 1967.